

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sruthi Venigalla	Team: Team # 3	CCRB Case #: 201305427	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 05/23/2013 2:20 AM	Location of Incident: § 87(2)(b)	Precinct: 73	18 Mo. SOL 11/23/2014	EO SOL 11/23/2014	
Date/Time CV Reported Thu, 05/23/2013 12:52 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 05/23/2013 12:52 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. LT Craig Edelman	00000	932592	073 PCT
2. POM Julio Batista	17763	951530	PBBN

Officer(s)	Allegation	Investigator Recommendation
A.LT Craig Edelman	Abuse: Lt. Craig Edelman stopped § 87(2)(b)	§ 87(2)(b)
B.LT Craig Edelman	Discourtesy: Lt. Craig Edelman spoke rudely to § 87(2)(b)	§ 87(2)(b)
C.LT Craig Edelman	Abuse: Lt. Craig Edelman frisked § 87(2)(b)	§ 87(2)(b)
D.LT Craig Edelman	Abuse: Lt. Craig Edelman searched § 87(2)(b)	§ 87(2)(b)
E.LT Craig Edelman	Abuse: Lt. Craig Edelman strip-searched § 87(2)(b)	§ 87(2)(b)
§ 87(4-b) § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(4-b) § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On May 23, 2013, § 87(2)(b) filed a telephone complaint with the Civilian Complaint Review Board (CCRB) (Encl. 4A – 4B). Earlier the same day, at approximately 2:20 a.m., § 87(2)(b) was stopped by Lt. Craig Edelman and PO Julio Batista of the 73rd Precinct inside § 87(2)(b) in Brooklyn. The following allegations resulted:

- **Allegation A – Abuse of Authority: Lt. Craig Edelman stopped** § 87(2)(b)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation B – Discourtesy: Lt. Craig Edelman spoke rudely to** § 87(2)(b)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation C – Abuse of Authority: Lt. Craig Edelman frisked** § 87(2)(b)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- **Allegation D – Abuse of Authority: Lt. Craig Edelman searched** § 87(2)(b)
- **Allegation E – Abuse of Authority: Lt. Craig Edelman strip-searched** § 87(2)(b)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- § 87(4-b) § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

On May 24, 2013, mediation was offered to § 87(2)(b) but he opted to have the case investigated instead.

This case was originally assigned to Inv. Anna Andel, but re-assigned to the undersigned after Inv. Andel's departure from the agency.

Civilian Statement(s)

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) a black man who stands 5'5" tall and weighs 130lbs with black hair and eyes, was § 87(2)(b) old at the date of the incident. § 87(2)(b)

CCRB Testimony

On May 24, 2013, § 87(2)(b) was interviewed at the CCRB (Encl.5A – 5H). His testimony is summarized below.

On May 23, 2013, at approximately 2:20 a.m., § 87(2)(b) was walking with three men from a deli located on Livonia Avenue, towards his grandmother's house located at § 87(2)(b). § 87(2)(b) was wearing blue jeans, a blue button up shirt, a black jacket, and a red hat. He was not carrying anything in his hands.

In the vicinity of Livonia Avenue near a NYCHA housing complex, § 87(2)(b) observed an unmarked car with Lt. Craig Edelman and PO Julio Batista, stopped at Livonia Avenue and Watkins Street. § 87(2)(b) who did not obtain a license plate number, described the unmarked car as a 4-door, dark blue, Chevy Malibu, which the investigation determined was driven by Lt. Edelman. § 87(2)(b) parted ways with his friends and kept walking towards Dumont Avenue. The unmarked car remained stationary, but § 87(2)(b) believed that the officers had observed him for approximately five minutes. By the time § 87(2)(b) reached § 87(2)(b) the unmarked car had pulled up onto Dumont Avenue, and § 87(2)(b) also believed that the officers followed him and observed him entering the building and walking up the stairs to the third floor, while they remained in their car with the windows down. § 87(2)(b) went into his grandmother's apartment. When he left her apartment, he looked out of the hallway window on the third floor to see if the officers were still present. He did not see the officers in their car which remained in front of the building with the windows up.

§ 87(2)(b) walked towards a staircase exit, when Lt. Edelman and PO Batista appeared. Lt. Edelman placed both of his hands on § 87(2)(b)'s chest and pushed him two to three feet back into a wall and asked, "What are you doing? Where the fuck are you coming from?" § 87(2)(b) responded that he was coming from his grandmother's house. Lt. Edelman then asked where she lived and if he lived there, to which § 87(2)(b) responded no, before Lt. Edelman frisked § 87(2)(b)'s front coat pockets, front pants pockets and legs, and entered § 87(2)(b)'s two front pants pockets. § 87(2)(b) was carrying his keys in his right front pocket, and his ID in his left front pocket. Lt. Edelman removed the keys and ID from § 87(2)(b)'s pockets before returning them to his pockets. Lt. Edelman continued to search § 87(2)(b)'s back pants pockets, and his front two coat pockets, which did not contain items. Lt. Edelman also pulled the front of § 87(2)(b)'s waistband and underwear open for a few seconds. After searching § 87(2)(b) Lt. Edelman asked § 87(2)(b) for his identification, and to take him and PO Batista to where § 87(2)(b) had been coming from. § 87(2)(b) walked the officers to his grandmother's apartment and knocked once or twice before Lt. Edelman kicked the door twice.

§ 87(2)(b)'s cousin, § 87(2)(b) opened the door. PO Batista, who had § 87(2)(b)'s ID, asked § 87(2)(b) who § 87(2)(b) was and where he lived. § 87(2)(b) responded that § 87(2)(b) was his cousin and he did not live at that apartment. The officers went over the radio with § 87(2)(b)'s information. § 87(2)(b) also requested the officers' names and the officers provided the information, which § 87(2)(b) wrote down on a piece of paper and presented during his interview at the CCRB. Lt. Edelman stated nothing was going to happen to him anyway because he was a lieutenant. The officers returned § 87(2)(b)'s identification and left. § 87(2)(b) was not issued a summons as a result of the incident.

Witness: § 87(2)(b)

- § 87(2)(b) is a woman of unknown age, race, height, and weight and occupation that § 87(2)(b) identified as a witness. According to § 87(2)(b) § 87(2)(b) is his cousin.

Attempts to Contact Civilians

Between July 30, 2013 and October 16, 2013, the undersigned investigator initiated five phone calls and mailed one please call letter to § 87(2)(b) on October 16, 2013. During a phone conversation on July 30, 2013, § 87(2)(b) who confirmed she was § 87(2)(b)'s cousin, agreed to provide a statement at the agency on August 8, 2013. However, § 87(2)(b) did not appear for her scheduled statement. During a phone call initiated by the undersigned investigator on the same day, § 87(2)(b) stated that she could not provide a phone statement or schedule another appointment because of illness. The undersigned investigator initiated a third phone call on October 8, 2013 and § 87(2)(b) was scheduled to provide a statement on October 15, 2013. On the date of the appointment, § 87(2)(b) contacted the undersigned investigator and left a voicemail stating that she was unable to appear. § 87(2)(b) was unable to be reached via phone thereafter.

NYPD Statement(s):

Subject Officer: PO JULIO BATISTA

- *PO Batista, a Hispanic man who stands 5'9" tall and weighs 180lbs with black hair and brown eyes, was § 87(2)(b) old at the time of the incident.*
- *On May 23, 2013, PO Batista worked from 7:30 p.m. to 4:05 a.m., in uniform, and assigned to Impact Auto with the 73rd Precinct in an unmarked vehicle with Lt. Edelman.*

Memo Book

PO Batista made the following memo book entries related to this incident (Encl. 6A-6C):

At 2:20 a.m., one male stopped for possible trespass inside § 87(2)(b)

§ 87(2)(b) male, Black, § 87(2)(b)

CCRB Testimony

On August 30, 2013, PO Batista was interviewed at the CCRB (Encl. 6D-6E)

On May 23, 2013 at approximately 2:20 a.m., Lt. Edelman and PO Batista, were travelling westbound on Livonia Avenue when they observed a group of men with "open containers". PO Batista did not clarify the type of containers they were, or if they contained alcohol. The group of men "scattered into the projects" when the officers drove by. Lt. Edelman continued driving without stopping any of the men, and they stopped next to § 87(2)(b) to see if any of the men who scattered, entered that building. PO Batista did not see any individual enter the building. While they were in the vehicle, PO Batista stated that Lt. Edelman first observed § 87(2)(b) on the second floor of the building looking out of the window and stepping away from the window. PO Batista also observed § 87(2)(b) doing so approximately six or seven times in less than a minute. There was lighting from the street as well as from inside the building. PO Batista described this area as prone to shootings, and because of the number of shootings that had happened in the area, PO Batista and Lt. Edelman discussed approaching § 87(2)(b) to verify his residence in the building.

PO Batista and Lt. Edelman entered the building and walked up to the second floor where they observed § 87(2)(b) in the middle of the hallway alone, pacing back and forth. PO Batista did not recognize him from the group of males that had scattered in the street. PO Batista could not

recall what § 87(2)(b) was wearing, or if he was carrying anything, but stated that § 87(2)(b) was not carrying an open container. § 87(2)(b) who appeared flushed, was intoxicated as there was alcohol on his breath. Neither PO Batista nor Lt. Edelman pushed § 87(2)(b) or placed their hands on § 87(2)(b)'s chest. PO Batista asked § 87(2)(b) if he lived in the building, and he replied that he was visiting his grandmother who lived in that building. PO Batista asked § 87(2)(b) for his identification which § 87(2)(b) provided to PO Batista. Neither PO Batista nor Lt. Edelman said "What the fuck are you doing?" or "Where the fuck are you coming from?" PO Batista described § 87(2)(b)'s demeanor as belligerent and non-compliant. § 87(2)(b) was "yelling and causing a scene, possibly waking up neighbors." § 87(2)(b) also appeared as though "he didn't like the fact that the officers were trying to establish the fact that he did not live in the building"; PO Batista "could tell that he was trying to avoid the officers and end the interaction as soon as possible." PO Batista also stated that § 87(2)(b) was blading his body, or shifting it to the right, away from the officers, and therefore, PO Batista feared for his safety and "felt like anything could happen". Lt. Edelman frisked § 87(2)(b) around his waistband. Other than § 87(2)(b) shifting his body to the right and "looking like he was trying to hide something", PO Batista could not recall why Lt. Edelman frisked him. PO Batista could not recall if there was a bulge or shape on his waistband, but that there may have been a cellphone. Neither PO Batista nor Lt. Edelman searched § 87(2)(b). § 87(2)(b) removed anything from his pockets, or pulled open § 87(2)(b)'s waistband to look inside. § 87(2)(b) used profanity in saying, "I have a lawsuit, I'll take all your fucking pensions. I'm gonna get paid. You have no right." During his interview, PO Batista said, "I don't have much time on the job and I feel like he's the type of person trying to bait young officers into possibly putting them into situations."

§ 87(2)(b) knocked on a door and a young female who appeared to be in her late twenties answered. § 87(2)(b) asked her, "You know me, right?" and the female responded "Yes." PO Batista stated that oftentimes, trespassers attempt to cover up trespassing by asking people they do not know similar questions. PO Batista did not observe § 87(2)(b)'s grandmother whom he claimed to be visiting. § 87(2)(b) then asked PO Batista for his name and shield, which were visible. PO Batista stated that he did not provide the information verbally. When § 87(2)(b) asked Lt. Edelman for his name and shield, PO Batista stated that Lt. Edelman did not provide the information. The interaction concluded by the officers leaving the building.

Subject Officer: Lt. CRAIG EDELMAN

- *Lt. Edelman, a white man who stands 5'10" tall and weighs 170lbs with brown hair and brown eyes, was § 87(2)(b) old at the time of the incident.*
- *On May 23, 2013, Lt. Edelman worked from 7:30 p.m. to 4:05 a.m., in uniform, and assigned to Impact Auto with the 73rd Precinct in an unmarked vehicle with PO Batista.*

Memo Book

Lt. Edelman made the following memo book entries related to this incident (Encl. 6G - 6I): At 2:20 a.m., one male stopped for possible trespass inside NYCHA; § 87(2)(b)

§ 87(2)(b), § 87(2)(b).

CCRB Testimony

Lt. Edelman was interviewed at the CCRB on September 26, 2013 (Encl. 6J-6K). § 87(2)(g)

On May 23, 2013 at approximately 2:00 a.m., PO Batista and Lt. Edelman were patrolling the confines of the 73rd Precinct impact zone in the vicinity of Livonia Avenue near Dumont Avenue. Lt. Edelman observed, for less than a minute, a group of four or five men who were disorderly, loud and "acting wild", with open containers. Lt. Edelman only saw plastic cups, but did not know if the cups contained alcohol. Lt. Edelman did not stop to address this group of

men because the group went inside the surrounding public housing buildings as soon as they appeared to observe the officers. Lt. Edelman continued to drive and parked in front of § 87(2)(b). Lt. Edelman could not recall why he chose to park at that specific building. He did not observe any individual enter the building.

Lt. Edelman described the area outside this building as quiet with a moderate amount of light. While they were sitting inside of their vehicle, approximately forty to fifty feet away from the entrance of the building, Lt. Edelman and PO Batista observed for approximately a minute, a male “peering out” of the second floor hallway window of the building two or three times. Lt. Edelman was unsure if this male was among the group of males with clear plastic cups. He and Lt. Edelman entered the building because there have always been “problems in the building”, violence in the area, and he is likely to investigate because “at 2 a.m. in the morning, there is no reason to be pacing back and forth.” Lt. Edelman had no further reasoning for entering the building.

Lt. Edelman and PO Batista exited their vehicle, walked into the building and used the stairs to enter the second floor of the building, where they observed § 87(2)(b) alone. Lt. Edelman could not recall what § 87(2)(b) was wearing or if he was carrying anything. Lt. Edelman, emphasizing that because it’s 2 a.m. in the morning, asked § 87(2)(b) “what his business is.” Neither Lt. Edelman nor PO Batista placed their hands on § 87(2)(b)’s chest, pushed him into a wall or asked, “What the fuck are you doing here?” or “Where the fuck are you coming from?” § 87(2)(b) who was described to be loud, irate, belligerent and intoxicated, stated that he was visiting his grandmother. When asked to describe specific words or actions, Lt. Edelman stated that § 87(2)(b) seemed tense and made them feel as though “he was going to do something stupid,” that he might have had a weapon, and that the officers could have gotten injured. § 87(2)(b) was also blading his body, such that his right side was facing away from them. § 87(2)(b) was also telling the officers that he was going to “have their jobs.” Lt. Edelman could not recall if there was a conversation about § 87(2)(b) being followed. Lt. Edelman patted down the right side of § 87(2)(b)’s pants pockets where § 87(2)(b) was blading away. Neither Lt. Edelman nor PO Batista searched § 87(2)(b) or removed items from his pockets, or pulled open § 87(2)(b)’s waistband to look in.

Lt. Edelman could not recall if he or PO Batista asked for § 87(2)(b)’s identification or if it was requested before or after the frisk. § 87(2)(b) provided it, and when he did, the officers asked him to knock on a door for someone to verify his residence at the building. Lt. Edelman stated that PO Batista might have run a warrant check. A young female, who appeared to be in her twenties, answered the door and said that she knew § 87(2)(b). This female, identified by § 87(2)(b) as § 87(2)(b) was not present when § 87(2)(b) was stopped, questioned and frisked. Lt. Edelman and PO Batista attempted to explain to § 87(2)(b) in a rational way why he had been stopped, however § 87(2)(b) was not willing to have further conversation with the officers. Lt. Edelman could not recall if § 87(2)(b) asked either him or PO Batista for their name and shield. The interaction, which lasted approximately five minutes, ended with the officers saying, “Alright, have a good day,” and § 87(2)(b) telling the officers to “go fuck themselves.” Lt. Edelman stated that PO Batista prepared a 250, but when he was informed that the 250 log came back negative, Lt. Edelman stated that he did not recall verifying the 250 or seeing PO Batista filling out the form.

NYPD Document(s)

Stop, Question and Frisk Log

The electronic stop, question and frisk log (Encl. 7A) indicates that no report was prepared in relation to this incident.

Status of Civil Proceedings

- § 87(2)(b) has not filed a notice of claim with the City of New York with regard to the incident (Encl. 9I) as of January 14, 2014, which is six months past the filing deadline.

Civilian(s) Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian(s) CCRB History

- § 87(2)(b) has filed CCRB complaints § 87(2)(b)

Subject Officer(s) CCRB History

- Lt. Edelman has been a member of the service for ten years and there are no substantiated CCRB allegations against him (encl. 2A).
- PO Julio Batista has been a member of the service for one year and there are no substantiated CCRB allegations against him (encl. 2B).

Allegations Not Pleaded

PO Batista admitted that while he did not provide his name verbally, he pointed to his shield upon § 87(2)(b)'s request for his name. Lt. Edelman could not recall if § 87(2)(b) asked for his name, however, PO Batista stated that Lt. Edelman did not provide his name when § 87(2)(b) requested it. § 87(2)(b) stated that the officers provided their names upon his request for their names and he provided a piece of paper listing the names of the officers during his interview at the CCRB on May 24, 2013. § 87(2)(g)

Conclusion

Identification of Subject Officer(s)

- Lt. Edelman and PO Batista admitted to interacting with § 87(2)(b)

Allegation A – Abuse of Authority: Lt. Craig Edelman stopped § 87(2)(b)

It is undisputed that Lt. Edelman and PO Batista interacted with § 87(2)(b) inside of a NYCHA building located at § 87(2)(b). PO Batista and Lt. Edelman parked in front of the building and observed an individual on the second floor of the building “peering out of the window” (stepping in front of the window and stepping away). § 87(2)(b) admitted to remaining at a hallway window to observe the officers. PO Batista stated that because of the number of shootings that had occurred in the area, he and Lt. Edelman discussed approaching § 87(2)(b). Lt. Edelman stated that he investigated because “at 2 a.m., there is no reason to be pacing back and forth.” The manner in which Lt. Edelman and PO Batista stopped § 87(2)(b) is disputed. § 87(2)(b) indicated that when he encountered Lt. Edelman and PO Batista at a staircase exit on the same floor, Lt. Edelman placed both of his hands on § 87(2)(b)'s chest, pushed him backwards and asked, “What are you doing? Where the fuck are you coming from?” Although Lt. Edelman and PO Batista indicated they did not push § 87(2)(b) or use profanity, Lt. Edelman emphasized again that because it was 2 a.m., he asked § 87(2)(b) “what his business is.” PO Batista asked § 87(2)(b) for his identification and if he lived in the building. § 87(2)(b) replied that he was visiting his grandmother. PO Batista also stated that § 87(2)(b) appeared as though “he didn’t like the fact that

the officers were trying to establish the fact that he did not live in the building.” PO Batista also “could tell that he was trying to avoid the officers and end the interaction as soon as possible.”

§ 87(2)(g)

A seizure of person is defined as a significant interruption of an individual’s liberty of movement. An officer may stop a person only if he reasonable suspects that the person is committing, has committed, or is about to commit a crime. People v. DeBour, 40 N.Y. 2d 210 (1976) (Encl. 1A -1K). Innocuous behavior, even in a high crime area, does not provide reasonable suspicion. People v. Hampton 200 A.D.2d 466 (1st Dept., 1994) (Encl. 1L – 1N).

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Discourtesy: Lt. Craig Edelman spoke rudely to § 87(2)(b)

According to § 87(2)(b) he was walking towards a staircase exit when Lt. Edelman and PO Batista appeared. Lt. Edelman placed both of his hands on § 87(2)(b)’s chest and pushed him two to three feet back into a wall and asked, “What are you doing? Where the fuck are you coming from?” Lt. Edelman denied this allegation and stated that he asked § 87(2)(b) “what his business was.” PO Batista denied witnessing Lt. Edelman ask § 87(2)(b) the alleged questions.

§ 87(2)(b) who was identified by as a witness to part of this incident by § 87(2)(b) was uncooperative in providing a statement. § 87(2)(b) was not present for the remarks that Lt. Edelman allegedly made to § 87(2)(b) during the interaction.

§ 87(2)(g)

Allegation C – Abuse of Authority: Lt. Craig Edelman frisked § 87(2)(b)

It is undisputed that Lt. Edelman frisked § 87(2)(b) alleged that Lt. Edelman frisked his coat pockets, front pants pockets and legs when § 87(2)(b) replied “no” in response to Lt. Edelman asking if he lived in the building. Lt. Edelman stated that he frisked § 87(2)(b)’s right pants pocket because § 87(2)(b) was “blading” his body to the right such that § 87(2)(b)’s right side was turned away from the officers. Lt. Edelman stated that § 87(2)(b) was also tense and made him feel as though “he was going to do something stupid.” PO Batista stated Lt. Edelman frisked § 87(2)(b) around his waistband and when § 87(2)(b) shifted his body to the right away from the officers, he felt as though “anything could happen.”

Officers may not stop and frisk a suspect who blades merely their body to shield a weighted down bulging object. People v. Gerard, 94 A.D.3d 592 (1st Dep’t. 2012). (Encl. 1O - 1P). Also, an officer cannot frisk an individual unless the officer reasonably suspects that he or she is in danger by virtue of the individual being armed. People v. DeBour 40 N.Y.2d 201 (1976) (Encl. 1A – 1K)

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]

Allegation D – Abuse of Authority: Lt. Craig Edelman searched § 87(2)(b) [Redacted]

Allegation E – Abuse of Authority: Lt. Craig Edelman strip-searched § 87(2)(b) [Redacted]

Lt. Edelman denied reaching into § 87(2)(b) [Redacted]'s pockets, removing any items from his pockets, or pulling open § 87(2)(b) [Redacted]'s waistband to look in, which was corroborated by PO Batista. No stop and frisk report is on file with regard to this incident.

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]

§ 87(4-b) § 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date